

EXHIBIT A

SOFTWARE LICENSE AGREEMENT

ORIGINAL

THIS SOFTWARE LICENSE AGREEMENT ("Agreement") is made and entered into this 1st day of February 2002, (the "Effective Date") by and between SAS Institute Inc. (hereinafter "Licensor"), a corporation duly organized and existing under the laws of the State of North Carolina, and General Motors Corporation (hereinafter "GM"), a corporation duly organized and existing under the laws of the State of Delaware.

WITNESSETH:

WHEREAS, GM desires to have the right to acquire from Licensor certain computer software programs and certain support and maintenance services; and

WHEREAS, Licensor is willing to provide computer software programs and services to GM in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration received and to be received, Licensor and GM agree as follows:

ARTICLE I. AGREEMENT, TERM, AND DEFINITIONS

1.1 Agreement and Term. The parties agree that the terms and conditions of this Agreement apply to the provision of Licensed Software and Services (as later defined) to GM by Licensor. The term of this Agreement commences on the Effective Date and the Agreement shall continue to be in effect until terminated by either party as set forth in this Agreement.

1.2 Certain Definitions. The following definitions apply to this Agreement:

- (a) "Applicable Specifications" means the functional, performance, operational, compatibility, and other specifications or characteristics of the Licensed Software described in applicable Documentation and such other specifications or characteristics of the Licensed Software agreed upon in writing by the parties.
- (b) "Documentation" means user guides, operating manuals, education materials, product descriptions and specifications, technical manuals and supporting materials relating to the Licensed Software or used in conjunction with the Services, whether distributed in print, magnetic, electronic, online, or video format, in effect as of the date the Licensed Software is shipped, or the Service is provided, to GM.
- (c) "License Period" means one (1) calendar year unless otherwise specified on a Purchase Order.
- (d) "Licensed Software" means computer programs identified in Exhibit A, attached hereto, that are provided or to be provided by Licensor pursuant to this Agreement. The definition of Licensed Software also includes any enhancements, translations, modifications, updates, releases, or other changes to Licensed Software which are provided or to be provided as part of Licensor's performance of warranty Service obligations or pre-paid support Services pursuant to this Agreement.
- (e) "Purchase Order" means the written order(s) submitted by GM, or any third party to whom GM has authorized to submit written order(s) on GM's behalf, to Licensor which identifies the Licensed Software and Services GM desires to obtain from Licensor. Each Purchase Order will include or be accompanied by all information required on Exhibit A hereto.
- (f) "Services" means the support and warranty services, provided or to be provided by Licensor pursuant to this Agreement.

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- (g) "Site" means geographically contiguous buildings, each of which, in whole or in part, is occupied or accessed by GM. "Geographically contiguous" means adjacent tracts or parcels of real property separated, if at all, only by publicly dedicated rights of way or private easements.

ARTICLE II. PROVISION OF LICENSED SOFTWARE

- 2.1 General. GM is entitled to obtain Licensed Software and Services for the benefit of and use by affiliates of GM. Such affiliates and their respective employees are entitled to use the Licensed Software and Services in accordance with this Agreement and have and are entitled to all rights, benefits, and protections granted to GM pursuant to this Agreement with respect to such Licensed Software and Services. GM is responsible for compliance by its affiliates with the terms and conditions set forth in this Agreement and is liable for any violations of the Agreement by an affiliate to the same extent as if GM violated the Agreement. Certain Licensed Software modules, solutions and suites are governed by additional terms which are set forth in Exhibit B hereto.
- 2.2 Delivery of the Licensed Software. Upon acceptance by Licensor of one (1) or more Purchase Order(s), Licensor shall deliver the Licensed Software to GM on the delivery date set forth in the applicable Purchase Order or as otherwise agreed upon by the parties. Charges for transportation of Licensed Software shall be paid by Licensor. All risk of loss of, or damage to, the Licensed Software shall be borne by Licensor until receipt of delivery of such Licensed Software by GM. GM may cancel without charge all or any portion of the Licensed Software or Services at any time prior to delivery.
- 2.3 Right to Cancel for Delays. In the event of a delay in delivery of all or any portion of Licensed Software or Services listed on a Purchase Order not excused in this Agreement, GM may cancel without charge all or any portion of the Licensed Software or Services for which delivery or performance has been so delayed. GM shall not be liable for any expenses incurred by Licensor for canceled, undelivered, or returned Licensed Software or Services. GM shall receive a refund of all amounts paid to Licensor with respect to the canceled and/or returned Licensed Software or Services.
- 2.4 Grant and Conditions of License. GM shall accept delivered copy(ies) of Licensed Software on the date (the "Acceptance Date") when all necessary Documentation has been received and the Licensed Software performs in accordance with and/or conforms to its Applicable Specifications. In the absence of agreed upon acceptance tests and an acceptance testing schedule, unless GM has notified Licensor that the Licensed Software is not acceptable, the Acceptance Date shall be thirty (30) days after delivery of the Licensed Software to GM. In the event Licensed Software does not so perform, GM may (i) continue to test the Licensed Software with the assistance of Licensor for a mutually agreed upon period, (ii) permit Licensor to repair or replace the Licensed Software at no additional expense to GM, or (iii) return the Licensed Software and Documentation to Licensor, at Licensor's expense and without liability to Licensor, and any amounts paid by GM for the Licensed Software and Documentation shall be refunded by Licensor to GM. Acceptance of Licensed Software does not waive any warranty rights provided in this Agreement for the Licensed Software.
- 2.5 Grant of License. For each item of Licensed Software received by GM, Licensor grants GM and GM has a worldwide, nonexclusive, license to use, execute, store, and display the object code version of the Licensed Software for the License Period, (a "License") in accordance with the type of License selected and in accordance with the terms and conditions of this Agreement. Exhibit A shall designate the type of License which is selected; if Exhibit A fails to designate the type of License desired, then such License shall be deemed to be a CPU Software License (as later defined in this Section).
- (a) A "CPU Software License" permits GM to use the Licensed Software on any single computer (which may include more than one (1) central processing unit) or item of equipment ("CPU") and to copy the Licensed Software as necessary for archival, maintenance, disaster recovery testing, or back-up purposes. If GM desires to run

parallel operations in the process of conducting a disaster recovery test or transferring operations from one CPU to another CPU, GM may operate the Licensed Software on two (2) CPUs, only one (1) of which may be used for production work at any one time, for the period of time reasonably necessary to complete the disaster recovery test or transfer, not to exceed thirty (30) days.

- (b) A "Site Software License" permits GM to use the Licensed Software at the Site designated in the Purchase Order and to copy the Licensed Software as necessary for dissemination at the Site and for archival, maintenance, disaster recovery testing, or back-up purposes. Notwithstanding the foregoing, the Licensed Software may be used at other than the designated Site, if (i) the designated Site cannot be used, (ii) the designated Site is replaced or changed by GM, or (iii) GM provides Licensor with prior written notice. If GM desires to run parallel operations in the process of conducting a disaster recovery test or transferring operations from one Site to another Site, GM may operate the Licensed Software at two (2) Sites, only one (1) of which may be used for production work at any one time, for the period of time reasonably necessary to complete the disaster recovery test or transfer, not to exceed thirty (30) days.
- (c) A "Network Software License" permits GM to use the Licensed Software on any single computer, file server, or item of equipment which may be accessed by multiple, networked devices (collectively hereinafter referred to as the "Network"). Portions of the Licensed Software may be downloaded as appropriate for use by the devices on the Network. If GM desires to run parallel operations in the process of conducting a disaster recovery test or transferring operations from one Network to another Network, GM may operate the Licensed Software on two (2) Networks, only one (1) of which may be used for production work at any one time, for the period of time reasonably necessary to complete the disaster recovery test or transfer, not to exceed (30) days.
- (d) A "Corporate Software License" permits GM to use the Licensed Software at any GM location and on any items of equipment and to make and use unlimited copies of the Licensed Software.
- (e) Any License granted under this Agreement permits GM to use Licensed Software for its corporate purposes and performing disaster recovery, disaster testing, and backup as GM deems necessary. It does not allow GM to use the Licensed Software to perform outsourcing services to third parties or to use the Licensed Software for the benefit of third parties, through analysis of data owned by third parties. Notwithstanding the foregoing, GM may provide to third parties static reports generated by GM through its use of the Licensed Software using only GM or GM-related data.
- (f) Licensor acknowledges and agrees that any authorized third parties providing services to GM ("Third Party Service Providers") may have access to and use of the Licensed Software and Documentation so long as such Third Party Service Providers are utilizing the Licensed Software and Documentation solely for GM's benefit. Notwithstanding the foregoing, such Third Party Service Providers may indirectly benefit from the above authorization due to GM's payment of service fees to such Third Party Service Providers.

2.6 Licensed Software Support Services. The support Services set forth below for the Licensed Software shall be provided by Licensor to GM during the License Term at no charge to GM other than the annual license fee.

- (a) Licensor shall attempt to provide to GM all error corrections and all operational and support assistance necessary to cause Licensed Software to perform in accordance with its Applicable Specifications. Licensor shall also provide remedial support designed to provide a by-pass or temporary fix to a defect until the defect can be permanently corrected. In the event Licensor is unable to provide GM with error corrections, then GM shall be entitled to the remedies set forth in Section 3.1 below.

- (b) Licensors shall provide to GM all upgrades, modifications, improvements, enhancements, extensions, and other changes to Licensed Software developed by Licensors which are generally made available to other customers of Licensors. Further, Licensors shall provide to GM all updates to the Licensed Software that are necessary to cause the Licensed Software to operate under new versions or releases of the Licensed Software's current operating system(s) and are generally made available to other customers of Licensors.
 - (c) Licensors shall provide telephone hot-line support between 9:00 a.m. and 5:00 p.m. at the applicable maintenance location.
 - (d) Licensors shall provide to GM any revisions to the existing Documentation developed for the Licensed Software or necessary to reflect all corrections, updates, upgrades, modifications, improvements, enhancements, extensions or other changes to the Licensed Software that are made generally available to other customers of Licensors.
 - (e) To the extent agreed upon by the parties, Licensors shall provide to GM Licensed Software Installation and training.
- 2.7 Provision of Source Code to GM. If requested by GM, Licensors will place a copy of the source code with a mutually agreed upon escrow agent under the terms and conditions of a separate escrow of source code agreement in the form of Exhibit 2.7 attached hereto.
- 2.8 Proprietary Markings. GM shall not remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Licensed Software.
- 2.9 Duplication of Documentation. GM may make reasonable screen-print duplicates of portions of online versions of the Licensed Software Documentation, and reasonable duplicates of individual pages of non-online Licensed Software Documentation, at no additional charge, for GM's use in connection with the provision of Licensed Software so long as all required proprietary markings are retained on all duplicates. Notwithstanding the foregoing, GM is not permitted to make full duplicates of any Licensed Software Documentation.
- 2.10 Ownership of Licensed Software and Modifications. The Licensed Software shall be and remain the property of Licensors or third parties which have granted Licensors the right to license the Licensed Software and GM shall have no rights or interests therein except as set forth in this Agreement. GM shall be entitled to modify the Licensed Software and to develop software derivative of or interfacing with the Licensed Software. All modifications of and software derivative of the Licensed Software developed by GM shall be and remain the property of GM, and Licensors and its Employees shall have no rights or interests therein.
- 2.11 Transfer of Licensed Software to Divested Entities. In the event GM divests any division or subsidiary requiring continued access to and use of Licensed Software while GM and the divested entity wind down such divestiture, and such that GM's controlling interest in such divested entity is less than fifty percent (50%), then the divested entity may continue to access and use Licensed Software at no additional charge to GM for up to ninety (90) days following the closing date of such divestiture. If the divested entity requires continued access to and use of Licensed Software beyond the above ninety (90) day period, then GM may permit such access and use by the divested entity for up to nine (9) additional months beyond the aforementioned ninety (90) day period by paying Licensors renewal license fees, prorated on a linear, per-annum basis, for the Licensed Software for which such access and use by the divested entity is required. A divested entity requiring continued use of any of Licensors's software beyond the one (1) year period following the closing date of the divestiture of such divested entity (i) will have no further rights to use Licensed Software hereunder, and (ii) must enter into its own license agreement with Licensors and pay Licensors applicable license fees for the divested entity's use of Licensors's software.
- 2.12 Protection of Licensed Software. During the term of a License, GM will treat the Licensed Software and Documentation with the same degree of care and confidentiality which GM provides for similar information belonging to GM which GM does not wish disclosed to the public, but not less than reasonable care. This provision shall not apply to Licensed Software or Documentation,

or any portion thereof, which is (i) already known by GM without an obligation of confidentiality, (ii) publicly known or becomes publicly known through no unauthorized act of GM, (iii) rightfully received from a third party without obligation of confidentiality, (iv) disclosed without similar restrictions by Licensor to a third party, (v) approved by Licensor for disclosure, or (vi) required to be disclosed pursuant to a requirement of a governmental agency or law so long as GM provides Licensor with timely prior written notice of such requirement. It will not be a violation of this Section if GM provides access to and the use of the Licensed Software or Documentation by any Third Party Service Provider so long as GM secures execution by such Third Party Service Provider of a confidentiality agreement as would normally be required by GM.

ARTICLE III. WARRANTIES, INDEMNITIES, AND LIABILITIES

3.1 Warranty. Licensor represents and warrants that:

- (a) The Licensed Software is and shall be free and clear of all liens and encumbrances, and GM shall be entitled to use the Licensed Software without disturbance;
- (b) No portion of the Licensed Software contains, at the time of delivery, any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus," or other computer software routines or hardware components designed to (i) permit access or use of either the Licensed Software or GM' computer systems by Licensor or a third party not authorized by this Agreement, (ii) disable, damage or erase the Licensed Software or data, or (iii) perform any other such actions;
- (c) The Licensed Software and the design thereof shall not contain preprogrammed preventative routines or similar devices which prevent GM from exercising the rights granted to GM under this Agreement or from utilizing the Licensed Software for the purpose for which it was designed;
- (d) Each item of Licensed Software and its media (i) shall be new and shall be free from defects in manufacture, materials, and design, (ii) shall be manufactured in a good and workmanlike manner using a skilled staff fully qualified to perform their respective duties, and (iii) shall function properly under ordinary use and operate in conformance with its Applicable Specifications and Documentation.

The Licensor and its licenseors disclaim all other warranties, express or implied, including the warranties of merchantability and fitness for a particular purpose, or arising as a result of custom or usage in the trade or by course of dealing.

Notwithstanding anything in this Agreement to the contrary, GM acknowledges that the License Software contains a product authorization code. The product authorization code causes the Licensed Software to cease operating shortly after the annual license period expires unless the license is renewed by payment of the renewal license fee and application of the then current product authorization code.

Licensor will provide warranty Service to GM at no additional charge and will include all Services or replacement Licensed Software or Licensed Software media necessary to enable Licensor to comply with the warranties set forth in this Agreement. If Licensor is unable to comply after using commercially reasonable attempts to do so, Licensor will (i) terminate the license for applicable Licensed Software, and (ii) refund to GM the then current license fees paid by GM to Licensor for Licensed Software for which the license was terminated by Licensor hereunder. Licensor shall pass through to GM any manufacturers' warranties which Licensor receives on the Licensed Software.

3.2 Indemnification. Licensor represents and warrants that (i) at the time of delivery to GM, no Licensed Software or Documentation provided under this Agreement is the subject of any litigation ("Litigation"), and (ii) Licensor has all right, title, ownership interest, and/or marketing rights necessary to provide the Licensed Software and Documentation to GM and that each License, the

Licensed Software and Documentation and their sale, license, and use hereunder do not and shall not directly or indirectly violate or infringe upon any copyright, patent, trade secret, or other proprietary or intellectual property right of any third party or contribute to such violation or infringement ("Infringement"). Licensors shall indemnify and hold GM, its Third Party Service Providers and GM's successors, officers, directors, employees, and agents (the "GM Entities") harmless from and against any and all actions, claims, losses, damages, liabilities, awards, costs, and expenses (including legal fees) resulting from or arising out of any litigation, any breach or claimed breach of the foregoing warranties, or which is based on a claim of an infringement and Licensors shall defend and settle, at its expense, all suits or proceedings arising therefrom. GM shall inform Licensors of any such suit or proceeding against the GM Entities and shall have the right to participate in the defense of any such suit or proceeding at its expense and through counsel of its choosing. Licensors shall notify GM of any actions, claims, or suits against Licensors based on an alleged infringement of any party's intellectual property rights in and to the Licensed Software or Documentation. In the event an injunction is sought or obtained against use of the Licensed Software or Documentation or in GM's opinion is likely to be sought or obtained, Licensors shall promptly, at its option and expense, either (A) procure for the GM Entities the right to continue to use the infringing Licensed Software or Documentation as set forth in this Agreement, or (B) replace or modify the infringing Licensed Software or Documentation to make its use non-infringing while being capable of performing the same function without degradation of performance, or (C) if either (A) or (B) above are not commercially reasonable, refund the license fee for the Licensed Software at issue for the then current license period and terminate the license to that Licensed Software. Notwithstanding the foregoing, and without limiting Licensors's obligation to indemnify the GM Entities hereunder, GM shall indemnify and hold SAS and its successors, officers, directors, employees, and agents harmless from and against any and all actions, claims, losses, damages, liabilities, awards, costs, and expenses (including legal fees), based on any Third Party Service Provider's access to and use of the Licensed Software.

- 3.3 **LIMITATION OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PURSUANT TO THIS AGREEMENT FOR ANY AMOUNTS REPRESENTING LOSS OF PROFIT, LOSS OF BUSINESS OR INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF THE OTHER PARTY. THE FOREGOING SHALL NOT LIMIT THE INDEMNIFICATION, DEFENSE AND HOLD HARMLESS OBLIGATIONS SET FORTH IN THIS AGREEMENT NOR SHALL IT LIMIT GM'S LIABILITY FOR INTENTIONAL VIOLATIONS OF LICENSOR'S INTELLECTUAL PROPERTY RIGHTS IN THE LICENSED SOFTWARE. WITHOUT LIMITING THE INDEMNIFICATION, DEFENSE AND HOLD HARMLESS OBLIGATIONS SET FORTH IN THIS AGREEMENT, THE MAXIMUM AMOUNT GM MAY RECOVER FOR ANY CLAIM RELATING TO MATTERS COVERED BY THIS AGREEMENT OR USE OF THE LICENSED SOFTWARE IS LIMITED TO TWO AND ONE HALF (2½) TIMES THE LICENSE FEES PAYABLE BY GM FOR THE LICENSED SOFTWARE DURING THE THEN CURRENT ANNUAL LICENSE PERIOD.
- 3.4 **Assignment of Right to Issue Purchase Orders.** GM may from time to time assign its right to issue Purchase Orders pursuant to this Agreement to a third party. In such event, all warranty provisions of this Agreement shall extend to GM as if GM were the original purchaser. Licensors acknowledges and agrees that any third party authorized by GM to issue Purchase Orders for GM shall have no responsibility or liability to Licensors for the Licensed Software and Documentation set forth on the Purchase Order. GM agrees that it remains ultimately responsible for payment of license and services fees for Purchase Orders issued on its behalf.
- 3.5 **Insurance.** During the term of this Agreement, Licensors shall at all times maintain at its own cost the following minimum insurance coverage with a financially solvent insurance company and, upon request of GM, shall furnish certificates evidencing commercial general liability insurance (occurrence basis form and automobile liability coverage) with a minimum of One Million Dollars (\$1,000,000) combined single limit per occurrence, insuring Licensors from claims for personal injury (including bodily injury and death) and property damage which may arise from or in connection with (A) the performance of Services hereunder, or (B) from or out of any negligent act or omission of Licensors, its officers, directors, agents or employees; in connection with such commercial general liability and automobile liability policies. GM shall be named an additional

insured and Licensor's insurer shall be required by Licensor to notify GM of any material change or cancellation of these coverages before expiration of these policies.

- 3.6 Survival of Article III. The provisions of this Article III shall survive the term or termination of this Agreement for any reason.

ARTICLE IV. PAYMENTS TO LICENSOR

- 4.1 Charges, Prices, and Fees. Charges, prices, and fees ("Charges") and discounts, if any, for Licensed Software and Services shall be determined as set forth in Exhibit A, in a Purchase Order, or as otherwise agreed upon by the parties, unless modified as set forth in this Agreement. Changes in hardware, number of users or number of workstations may result in additional Charges that will be billed as of the time of the change. Any increase in a Charge shall (i) not occur unless a minimum of twelve (12) months has elapsed since the effective date of the previously established Charge. In no event shall Charges exceed Licensor's then current established charges, prices, and fees.
- 4.2 Payment Through Invoicing. Except as otherwise set forth in this Agreement, any undisputed sum due to Licensor pursuant to this Agreement shall be payable on the date established by GM's Multilateral Netting System (MNS-2), which provides, on average, that payment shall be made on the second day of the second month after receipt by GM of a correct invoice therefor from Licensor. Licensor shall invoice GM on or after the applicable Acceptance Date for the Licensed Software covered by such invoice. Periodic payments, if any, due to Licensor pursuant to this Agreement shall be invoiced at the beginning of the period to which they apply. Payment for any other Services shall be invoiced as agreed upon by the parties or, in the absence of an agreement, upon completion of such Services.
- 4.3 Taxes. Unless GM provides Licensor with a valid tax exemption number or as otherwise provided herein, GM shall pay directly or reimburse Licensor for all taxes, assessments, permits and fees, however designated, which are levied upon this Software License or the Licensed Software and Services, or their use, excluding franchise taxes and taxes based upon Licensor's net income.

ARTICLE V. TERMINATION

- 5.1 Termination for Cause. In the event that either party materially or repeatedly defaults in the performance of any of its duties or obligations set forth in this Agreement, and such default is not substantially cured within thirty (30) days after written notice is given to the defaulting party specifying the default, then the party not in default may, by giving written notice thereof to the defaulting party, terminate the applicable License or Purchase Order relating to such default as of a date specified in such notice of termination.
- 5.2 Termination for Insolvency or Bankruptcy. Either party may immediately terminate this Agreement and any Purchase Order by giving written notice to the other party in the event of (i) the liquidation or insolvency of the other party, (ii) the appointment of a receiver or similar officer for the other party, (iii) an assignment by the other party for the benefit of all or substantially all of its creditors, (iv) entry by the other party into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, or (v) the filing of a meritorious petition in bankruptcy by or against the other party under any bankruptcy or debtors' law for its relief or reorganization.
- 5.3 Termination of Software License. GM may terminate any License for any reason by providing written notice to Licensor. If GM elects to so terminate a License, GM shall return to Licensor or, at GM's option, destroy, all copies of the Licensed Software and Documentation in GM's possession which are the subject of the terminated License, except as may be necessary for archival purposes.
- 5.4 Rights Upon Termination. Unless specifically terminated as set forth in this Article, all Licenses (and GM's right to use the Licensed Software in accordance with such Licenses) and Purchase Orders which require performance or extend beyond the term of this Agreement shall, at GM's

option, be so performed and extended and shall continue to be subject to the terms and conditions of this Agreement.

ARTICLE VI. MISCELLANEOUS

- 6.1 Binding Nature, Assignment, and Subcontracting. This Agreement shall be binding on the parties and their respective successors in interest and assigns, but neither party shall have the power to assign this Agreement without the prior written consent of the other. Notwithstanding the foregoing, if GM is subsumed into another entity such that GM no longer exists, then GM may assign this Agreement in its entirety to the acquiring entity without the written consent of Licensor; provided, however, that GM may not assign this Agreement to a competitor of Licensor in the business intelligence suites and platforms, data warehousing or marketing automation industries. If Licensor subcontracts or delegates any of its duties or obligations of performance in this Agreement or in a Purchase Order to any third party, Licensor shall remain fully responsible for complete performance of all of Licensor's obligations set forth in this Agreement or in such Purchase Order and for any such third party's compliance with the non-disclosure and confidentiality provisions set forth in this Agreement.
- 6.2 Confidentiality. Licensor acknowledges that in the course of performance of its obligations pursuant to this Agreement, Licensor may obtain confidential and/or proprietary information of GM or its affiliates. "Confidential Information" includes: information relating to development plans, costs, finances, marketing plans, equipment configurations, data, access or security codes or procedures utilized or acquired, business opportunities, names of customers, research, and development; the terms, conditions and existence of this Agreement; any information designated as confidential in writing or identified as confidential at the time of disclosure if such disclosure is verbal or visual; and any copies of the prior categories or excerpts included in other materials created by the recipient party. Licensor hereby agrees that all Confidential Information communicated to it by GM or its affiliates whether before or after the Effective Date, shall be and was received in strict confidence, shall be used only for purposes of this Agreement, and shall not be disclosed by Licensor, its agents or employees without the prior written consent of GM. This provision shall not apply to Confidential Information which is (i) already known by Licensor without an obligation of confidentiality, (ii) publicly known or becomes publicly known through no unauthorized act of Licensor, (iii) rightfully received from a third party (other than a GM affiliate) without obligation of confidentiality, (iv) disclosed without similar restrictions by GM to a third party (other than a GM affiliate), (v) approved by GM for disclosure, or (vi) required to be disclosed pursuant to a requirement of a governmental agency or law so long as Licensor provides GM with timely prior notice of such requirement. Except with respect to Licensed Software, which shall be governed by the Section of this Agreement titled "Protection of Licensed Software," information received by GM from Licensor shall only be considered proprietary and/or confidential after a separate agreement has been executed by a duly authorized representative of each party for the specific purpose of disclosing such information. The provisions of this Section shall survive the term or termination of this Agreement for any reason.
- 6.3 Media Releases. Except for any announcement intended solely for internal distribution by Licensor or any disclosure required by legal, accounting, or regulatory requirements beyond the reasonable control of Licensor, all media releases, public announcements, or public disclosures (including, but not limited to, promotional or marketing material) by Licensor or its employees or agents relating to this Agreement or its subject matter, or including the name, trade name, trade mark, or symbol of GM or any affiliate of GM, shall be coordinated with and approved in writing by GM prior to the release thereof. Licensor shall not represent directly or indirectly that any Licensed Software or Service provided by Licensor to GM has been approved or endorsed by GM or include the name, trade name, trade mark, or symbol of GM or any affiliate of GM on a list of Licensor's customers without GM's express written consent.
- 6.4 Notices. Wherever one party is required or permitted to give notice to the other pursuant to this Agreement, such notice shall be deemed given when delivered in hand, when mailed by registered or certified mail, return receipt requested, postage prepaid, or when sent by a third

party courier service where receipt is verified by the receiving party's acknowledgment, and addressed as follows:

In the case of GM:

General Motors Corporation
200 Renaissance Center
MC 482-C23-D24
Detroit, Michigan 48265

Attn: Legal Staff

In the case of Licensor:

SAS Institute Inc.
SAS Campus Drive
Cary, North Carolina 27513

Attn: Contracts Administrator for General Motors Corporation

Either party may from time to time change its address for notification purposes by giving the other party written notice of the new address and the date upon which it will become effective; first class, postage prepaid, mail shall be acceptable for provision of change of address notices.

- 6.5 Force Majeure. The term "Force Majeurs" shall be defined to include fires or other casualties or accidents, acts of God, severe weather conditions, strikes or labor disputes, war or other violence, or any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency. A party whose performance is prevented, restricted, or interfered with by reason of a Force Majeure condition shall be excused from such performance to the extent of such Force Majeure condition so long as such party provides the other party with prompt written notice describing the Force Majeure condition and takes all reasonable steps to avoid or remove such causes of nonperformance and immediately continues performance whenever and to the extent such causes are removed.
- 6.6 Severability. If, but only to the extent that, any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Agreement is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.
- 6.7 Dispute Resolution. In the event of any disagreement regarding performance under or interpretation of this Agreement and prior to the commencement of any formal proceedings, the parties shall continue performance as set forth in this Agreement and shall attempt in good faith to reach a negotiated resolution by designating a representative of appropriate authority to resolve the dispute.
- 6.8 Proposals and Special Projects. GM may request a written proposal, quote, or bid from Licensor for the provision of Licensed Software and/or Services for a specific GM project which may be governed by separately negotiated terms and conditions. In such event, any Licensed Software and Services obtained for such project shall be deemed for purposes of calculating accumulated purchases and any discounts set forth in this Agreement, to have been obtained pursuant to this Agreement.
- 6.9 Waiver. Any waiver of this Agreement or of any covenant, condition, or agreement to be performed by a party under this Agreement shall (i) only be valid if the waiver is in writing and

signed by an authorized representative of the party against which such waiver is sought to be enforced, and (ii) apply only to the specific covenant, condition or agreement to be performed, the specific instance or specific breach thereof and not to any other instance or breach thereof or subsequent instance or breach.

- 6.10 Remedies. All remedies set forth in this Agreement, or available by law or equity shall be cumulative and not alternative, and may be enforced concurrently or from time to time.
- 6.11 International Business. This Agreement shall apply in countries outside the United States and its territories. Licensor and GM and/or their respective agents, distributors, or affiliates authorized to conduct business in such countries may negotiate in good faith supplemental agreements incorporating further terms and conditions required by local law.
- 6.12 Compliance with Laws. In the performance of Services or the provision of Licensed Software pursuant to this Agreement, the parties shall comply with the requirements of all applicable laws, ordinances, and regulations of the United States or any state, country, or other governmental entity. Each party shall indemnify, defend, and hold the other party harmless from and against any and all claims, actions, or damages arising from or caused by the first party's failure to comply with the foregoing.
- 6.13 Provision of Most Favorable Terms. If GM notifies Licensor, based on its valid and substantiated belief, that Licensor has entered into an arrangement with a similar customer of Licensor, such similarity based on, without limitation, Customer's industry, size, budgets and combination of Licensed Software licensed from Licensor, providing for more favorable Charges and discounts than those provided to GM hereunder, and if Licensor confirms such belief, then this Agreement or the applicable Purchase Order shall thereupon be deemed amended to incorporate the more favorable Charges.
- 6.14 Setoff. All Charges due to Licensor by GM hereunder for Licensed Software and Services shall be considered net of indebtedness of Licensor to GM and its subsidiaries, and GM may deduct any credit due from Licensor to GM and its subsidiaries from any Charges due from GM to Licensor.
- 6.15 Survival of Terms. Termination or expiration of this Agreement for any reason shall not release either party from any liabilities or obligations set forth in this Agreement which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.
- 6.16 GOVERNING LAW. THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. RATHER, THESE RIGHTS AND OBLIGATIONS SHALL BE GOVERNED BY THE LAWS, OTHER THAN CHOICE OF LAW RULES, OF THE STATE OF MICHIGAN.
- 6.17 Entire Agreement. This Agreement constitutes the entire and exclusive statement of the agreement between the parties with respect to its subject matter, and there are no oral or written representations, understandings or agreements relating to this Agreement which are not fully expressed in this Agreement. This Agreement shall not be amended except by a written agreement signed by both parties. All exhibits, documents, and schedules referenced in this Agreement or attached to this Agreement, and each Purchase Order are an integral part of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and any such exhibits, documents, or schedules, the terms of this Agreement shall be controlling unless otherwise stated or agreed. Any other terms or conditions included in any shrink-wrap license agreements, quotes, invoices, acknowledgments, bills of lading, or other forms utilized or exchanged by the parties shall not be incorporated in this Agreement or be binding upon the parties unless the parties expressly agree in writing or unless otherwise provided for in this Agreement.

IN WITNESS WHEREOF, Licenser and GM acknowledge that each of the provisions of this Agreement were expressly agreed to and have each caused this Agreement to be signed and delivered by its duly authorized officer or representative as of the Effective Date.

GENERAL MOTORS CORPORATION

By: 

Printed Name: Thomas P. Kohler

Title: IT & Systems Manager

Date: 8/1/02

100.50.7619/28JUN02/RJC

LICENSOR

By: 

Printed Name: John G. Boswell

Title: Corporate Secretary

Date: July 31, 2002


SAS e-Intelligence

John G. Boswell
Corporate Secretary
SAS Institute Inc.



Exhibit 2.7

ESCROW AGREEMENT

At its own expense, Licensor shall place the source code for the latest version of the Licensed Software (the "Source Code") in escrow with Fort Knox Escrow Services, Inc., 2100 Norcross Parkway, Suite 150, Norcross, Georgia 30071 ("Escrow Agent"), to be held and furnished to GM by Escrow Agent under the terms and conditions set forth herein; provided, however that Licensor shall have no obligation to provide the source code to third party materials included in the Licensed Software.

1. Escrow Agent shall deliver the Source Code, or a copy thereof, to GM only in the event that:
 - 1.1 Escrow Agent receives a writing from GM providing the following:
 - 1.1.1 notification that Licensor, its assigns or successors (for the purposes of this paragraph 4, collectively "Licensor"), has ceased business or has otherwise ceased, due to liquidation or dissolution, to market and support the Licensed Software;
 - 1.1.2 evidence satisfactory to Escrow Agent that GM has previously notified Licensor of such event in writing;
 - 1.1.3 a demand that the Source Code be released and delivered to GM;
 - 1.1.4 an undertaking from GM that the Source Code being supplied to GM will be used only for the purposes of maintaining and supporting the Licensed Software as permitted under the terms of the Agreement; and
 - 1.1.5 specific instructions from GM for this delivery.
 - 1.2 Escrow Agent shall, within five (5) business days after receipt of all the documents specified in paragraph 1.1 above, send to Licensor a copy of all such documents. Licensor shall have thirty (30) days from the date on which Licensor receives such documents ("Objection Period") to notify Escrow Agent of its objection ("Objection Notice") to the release of the Source Code to GM and to request that the issue of GM's entitlement to a copy of the Source Code be resolved in accordance with the following provisions:
 - 1.3 If Licensor shall send an Objection Notice to Escrow Agent during the Objection Period, the parties shall first endeavor to resolve the matter by mediation under the Commercial Mediation Rules of the American Arbitration Association. The mediator shall be selected by the Regional Office of the American Arbitration Association in closest geographic proximity to Licensor's U.S.A. headquarters and shall be knowledgeable regarding the computer industry. Should the matter remain unresolved sixty (60) days after appointment of the mediator, it shall be submitted to, and settled by arbitration by, a panel of three (3) arbitrators selected as follows. Licensor and GM shall each select an arbitrator within sixty (60) days after written notice of arbitration is served and the selected arbitrators shall name a third arbitrator within sixty (60) days after such arbitrators are selected by such parties. If any of the three arbitrators remain unselected after the time period specified in this paragraph 1.3, such arbitrators shall be selected by the Regional Office of the American Arbitration Association described above, subject to the qualifications specified in this paragraph. The arbitrators shall apply North Carolina law without regard to choice of law provisions, except that in no event shall the North Carolina International Commercial Arbitration Act apply. The arbitrators shall be knowledgeable regarding the computer software industry. The place of arbitration shall be in the State of North Carolina, U.S.A., and the English language shall be used in the arbitration proceedings. The decision of the arbitrators shall be binding and conclusive on all parties involved, and judgment upon their decision may be entered in a court of competent jurisdiction. All costs of the arbitration incurred by the Escrow Agent, including reasonable attorney's fees and costs, shall be paid by the non-prevailing party.

- 1.4 If, at the end of the Objection Period, Escrow Agent has not received an Objection Notice from Licensor, then Escrow Agent shall deliver the Source Code to GM in accordance with the instructions specified in paragraph 1.1.5 above; provided, however, that Escrow Agent shall not deliver the Source Code until Licensor has paid all fees then due Escrow Agent.
2. Licensor may, upon sixty (60) days prior written notice to GM, designate another depository to hold the Source Code in escrow, provided such other depository agrees to provide GM terms no less favorable than those provided under this Escrow Agreement.
3. GM agrees that the Source Code released to GM pursuant to the terms and conditions set forth herein shall be used by GM only during the term of the Purchase Order (with accompanying Exhibit A) under which the Licensed Software is licensed and solely for the purposes of maintaining and supporting the Licensed Software for use as permitted under the Agreement. Upon expiration or termination of such license, GM shall, at the option of Licensor, its assigns or successor, either immediately return all copies of the Source Code to Licensor, its assigns or successor, destroy all copies of the Source Code and certify such destruction in a writing signed by an officer of GM. Ownership of the Source Code shall remain with Licensor, its assigns or successors, or Licensor's licensors at all times. GM further acknowledges and agrees that the Source Code contains Licensor trade secrets and GM shall keep the Source Code in the strictest confidence. The obligation of confidentiality is binding in perpetuity or for the maximum period permitted by law and, as such, survives the term of the Agreement and this Escrow Agreement.

Accepted by:

GM:

By

Authorized signature

Name (type or print)

Title

On

Date

SAS Institute Inc.

By

Authorized signature

Name

Title

On

Date



John G. Boswell

SAS
e-Intelligence

John G. Boswell
Corporate Secretary
SAS Institute Inc.

July 31, 2002

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EXHIBIT A

The following specific information concerning the Licensed Software should be placed on this attachment and must appear on each Purchase Order:

- Description of the Licensed Software
- Billing and shipping Information
- Delivery date of Licensed Software
- Type of License (Corporate, Site--Indicate Eligible Site(s), or CPU—indicate)
- Designated CPU(s))
- Operating system
- License fee
- Maintenance charges
- License period
- The following statement: "This Purchase Order is governed solely by the terms and conditions of Software License Agreement No. 42628 between GM and SAS Institute Inc., including any amendments thereto."

EXHIBIT B

For the purposes of this Exhibit B, GM shall be referred to as "Customer" and Licensor shall be referred to as "SAS."

SOFTWARE SOLUTIONS AND SUITES ATTACHMENT

The following additional terms govern Customer's use of Licensed Software offerings which consist of combinations of SAS software components or which include sub-components supplied by third parties and SAS (collectively, "Software Solutions and Suites," or singly, "Software Solution or Suite").

1. Software Solutions and Suites consist of bundled components. Customer may use such bundled components only through the application under which they are bundled, and may not use or deploy any individual component as a replacement for other Licensed Software. Individual components may be provided to Customer on the same or different media as other components of the Software Solution or Suite. SAS may add, modify or delete individual components in new releases. All additional and modified component software shall be governed by the terms of the Agreement and this Attachment.
2. SAS may notify Customer of specific usage or system requirements related to particular Software Solutions and Suites on mutually acceptable product ordering documentation. Software Solutions and Suites may only be used by Customer if Customer has a license to use the applicable Licensed Software on appropriate hardware as specified in the product ordering documentation.
3. Subject to any specific requirements or restrictions applicable to a Software Solution or Suite, Customer's employees ("Employees") and any authorized third party end users ("Third Party End Users") may use Software Solutions and Suites to access static, web-based applications written in SAS software ("Applications") that reside on the same hardware for which the Software Solutions and Suites are licensed by Customer. Except with SAS' prior written consent, Customer shall not use or allow any Employees or Third Party End Users to use the Software Solutions or Suites, whether directly or through any Application, to access any SAS Software that resides on any other hardware unless the Software is also licensed for use on that other hardware. The Applications must be written such that Third Party End Users may not edit SAS programs or have access to any other capability for free form programming in SAS Software. Customer may not use any Software Solutions or Suites to download or otherwise export or re-export any software or any underlying information or technology except in full compliance with all laws and regulations of the United States of America and any other applicable laws and regulations. Customer is responsible for and will hold SAS harmless from any damages suffered by SAS and any liability incurred by SAS as a result of Third Party End User access to SAS software.
4. The warehouse administration function of certain Software Solutions and Suites is licensed on a per named administrator basis. Upon licensing this Licensed Software, Customer must provide SAS with the name(s) of the warehouse administrator(s). As those administrators change, Customer may call or write SAS to update SAS. The warehouse administrator must be a Customer employee or other authorized user under the Agreement.
5. Unless otherwise authorized by SAS, the AppDev Studio™ functionality of any Software Suite may only be used for development and testing purposes, and may not be used for production use (although the applications and/or applets created with AppDev Studio may be used in a production environment).
6. Customer may use Software Suites containing a "performance data warehouse" solely for the purpose of web log data reporting and analysis through a "performance data warehouse." A "performance

data warehouse" is the data warehouse or structure created by certain Software Suites to house detailed and summarized performance data and other information necessary to manage the web log data Customer provides to such Software Suite. Customer may not modify such Software Suites to use elements of such Software Suites' functionality to analyze or report on data outside the performance data warehouse.

7. Customer acknowledges that certain Software Solutions and Suites include components which contain software licensed to SAS by Sun Microsystems, Inc. ("Sun Microsystems"), Microsoft Corporation ("Microsoft"), and certain other vendors (collectively, "Third Party Software"). The following additional terms shall apply to the Third Party Software and shall take precedence over any conflicting terms in the Agreement:

- 7.1. Customer may not distribute the Third Party Software to any third party in any modified form. The Third Party Software may not be leased, assigned, or sublicensed, in whole or in part. The Third Party Software is not designed or intended for use in online control of aircraft, air traffic, aircraft navigation or aircraft communications; or in the design, construction, operation or maintenance of any nuclear facility. Customer warrants that Customer will not use or redistribute the Third Party Software for such purposes. This Attachment does not authorize Customer to use any of SAS' names, trademarks or logos or any of its licensors' names, trademarks and logos, including but not limited to Sun Microsystems' and Microsoft's trade names, trademarks or logos.

- 7.2. Use, duplication, or disclosure of the Third Party Software and related documentation by the US Government is subject to restrictions as set forth in Rights in Technical Data and Computer Software Clauses in DFARS 252.277-7013(c)(1)(ii) and FAR 52.227-19, Commercial Computer Software - Restricted Rights (June 1987) as applicable and the Agreement.

- 7.3. DISCLAIMER OF WARRANTY. WHILE THE WARRANTIES SET FORTH IN THE AGREEMENT APPLY TO THE LICENSED SOFTWARE AS A WHOLE, THE THIRD PARTY SOFTWARE IS PROVIDED TO CUSTOMER "AS IS" WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF NON-INFRINGEMENT AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SAS' LICENSOR(S) DISCLAIM ANY LIABILITY CONNECTED WITH USE OF THE THIRD PARTY SOFTWARE.

- 7.4. LIMITATION OF LIABILITY. WHILE THE LIMITATION OF LIABILITY SET FORTH IN THE AGREEMENT APPLIES TO THE LICENSED SOFTWARE AS A WHOLE, SAS' LICENSOR(S) ARE NOT LIABLE FOR (a) DIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY SORT, WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE, EVEN IF SAS HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR (b) FOR ANY CLAIM BY ANY OTHER PARTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO CUSTOMER.

8. With respect to the Netscape LDAP Directory Server or iPlanet™ Software (collectively "LDAP Software") that may be furnished to Customer as a component of a given Software Solution or Suite, the following additional terms shall apply and shall take precedence over any conflicting terms in the Agreement:

- 8.1. Customer acknowledges that the LDAP Software is being provided as a bundled product with certain Software Solutions and Suites and not as a separate, stand-alone product. Customer may not use the LDAP Software except in connection with Customer's use of the Software

Solution or Suite with which it is bundled. Customer shall permit no more than seven hundred (700) users in total to use or otherwise access the LDAP Software. For purposes of the above-referenced restriction to seven hundred (700) users, any individual who has an entry in the directory server shall be considered a user (this does not include resources such as printers or other servers). Such users shall include all individuals who have access to the LDAP Software's services and not just to the number of individuals who may access those services concurrently. Customer may use the LDAP Software only for directory services for the Software Solution or Suite with which the LDAP Software is bundled, and shall not use the LDAP Software to provide directory services for any other software products or to provide stand-alone directory services.

- 8.2. SAS may terminate Customer's rights with respect to the LDAP Software immediately in the event of any breach by Customer of SAS' or SAS' licensors' intellectual property rights in the LDAP Software.
- 8.3. Customer shall not (a) modify any header files or class libraries in the LDAP Software, (b) create or alter tables or reports relating to the database portion of the LDAP Software (except as necessary for operating the LDAP Software), (c) publish any results of benchmark tests run on the LDAP Software to a third party without SAS' consent, or (d) use the database provided for use with the LDAP Software with any other product. Customer may copy and use the header files contained in the LDAP Software solely to create and distribute programs to interface with the server application programming interfaces (APIs).
- 8.4. The LDAP Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life-support machines or weapons systems, in which the failure of the LDAP Software could lead directly to death, personal injury, or severe physical or environmental damage ("High-Risk Activities"). Accordingly, SAS and its licensors and suppliers specifically disclaim any express or implied warranty of fitness for High-Risk Activities. Customer agrees that SAS and its licensors and suppliers will not be liable for any claims or damages arising from the use of the LDAP Software in such applications.

MODULES ATTACHMENT

This Attachment sets forth the terms that govern Customer's use of the following Licensed Software products to the extent licensed by Customer under the Agreement.

1. **Enterprise Guide.** Customer may not use Enterprise Guide to access any SAS software or SAS data on a server unless Customer has licensed SAS Integration Technologies software for that server. Customer may use each copy of Enterprise Guide for a maximum of ten (10) users.
2. **IT Charge Manager.** IT Charge Manager operates in conjunction with IT Service Vision software, which consists of a client and a server segment. Customer is authorized to use IT Charge Manager, including all its component software, on all computer hardware on which Customer has licensed the client segment of IT Service Vision software under the Agreement. IT Charge Manager will only operate after Customer has installed product authorization codes for the IT Service Vision software with which IT Charge Manager operates.
3. **SAS Information Delivery Portal ("ID PORTAL").** Customer may use ID PORTAL only for purposes of accessing and analyzing information over the Internet, and for no other purposes.

4. **SAS/C compiler and its related products ("SAS/C Software").** The SAS/C Software contains various programs and libraries which may be redistributed by Customer subject to the restrictions set forth below. These programs and libraries are part of either Limited Distribution Libraries or the SAS/C Redistribution Package. Listings of the programs and libraries included under each of these headings are included within the SAS/C Software and/or in the SAS/C Software documentation provided by SAS. Customer shall consult the SAS/C Software documentation for information on how to access these listings. The Limited Distribution Libraries and the SAS/C Redistribution Package are copyrighted property of SAS and shall be used by Customer only as follows:

A. **Limited Distribution Libraries**

Customer and successive third parties may copy and distribute the files included in the Limited Distribution Libraries and create derivative works based on these files. These files may be distributed worldwide.

B. **SAS/C Redistribution Package**

Customer's distribution of the SAS/C Redistribution Package files is subject to an annual license fee in addition to the license fee paid by Customer for the SAS/C Software. SAS/C Redistribution Package files may only be distributed as a component of Customer's product created using the SAS/C Software. In no event shall such files be distributed by Customer separate and apart from Customer's product nor shall Customer authorize third parties to redistribute such files in any manner. These files may be distributed worldwide.

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5. **SAS/Warehouse Administrator.** SAS/Warehouse Administrator is licensed on a per named administrator, per platform basis. Upon licensing SAS/Warehouse Administrator, Customer must provide SAS with the name(s) of the warehouse administrator(s). As those administrators change, Customer may call or write SAS to update SAS. The warehouse administrator must be a Customer employee.
6. **webEIS.** webEIS is for application development purposes only and may be installed only on workstations. The applications and/or applets created with webEIS may be deployed on servers and may be used in a production environment

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